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7 UNITED STATES DISTRICT COURT  
8 SOUTHERN DISTRICT OF CALIFORNIA  
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10 ESAU ROGERS,

11 Plaintiff,

12 vs.

14 S. RIVAS, et. al.,

15 Defendants.  
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CASE NO. 07-CV-2010 W (JMA)

**ORDER:**

1) ADOPTING REPORT AND  
RECOMMENDATION  
(Doc. No. 43.)

2) DENYING PLAINTIFF'S  
MOTION TO STRIKE  
(Doc. No. 40.)

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18 On October 17, 2007, Plaintiff Esau Rogers ("Plaintiff"), a state prisoner  
19 proceeding *pro se*, commenced this action alleging various constitutional and 42 U.S.C.  
20 § 1983 claims.<sup>1</sup> (Doc. No. 1.) On May 10, 2010, Magistrate Judge Jan M. Adler issued  
21 a Report and Recommendation ("Report") recommending that Plaintiff's motion strike  
22 be denied. (Doc. No. 43.)

23 On June 10, 2010, Plaintiff filed his objections. (Doc. No. 46.) The Court decides  
24 the matter on the papers submitted and without oral argument. See S.D. Cal. Civ. R.  
25 7.1(d.1). For the following reasons, the Court **OVERRULES** Plaintiff's objection,  
26 **ADOPTS** the Report, and **DENIES** Plaintiff's motion to strike.

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28 <sup>1</sup> A more detailed explanation of the factual background of this case can be found  
in this Court's prior rulings. (See e.g. Doc. No. 32.)

1 **I. LEGAL STANDARD**

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3 **A. Review of Magistrate Judge's Report**

4 A district court's duties concerning a magistrate judge's report and  
5 recommendation and a respondent's objections thereto are set forth in Rule 72(b) of the  
6 Federal Rules of Civil Procedure and 28 U.S.C. § 636(b)(1). The district court "must  
7 make a de novo determination of those portions of the report . . . to which objection is  
8 made," and "may accept, reject, or modify, in whole or in part, the findings or  
9 recommendations made by the magistrate." 28 U.S.C. § 636(b)(1)(C); see also United  
10 States v. Remsing, 874 F.2d 614, 617 (9th Cir. 1989).

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12 **B. Motion to Strike**

13 Rule 12(f) provides that a federal court may strike from the pleadings any  
14 insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.  
15 FED. R. CIV. P. 12(f). The function of a motion to strike is to avoid the unnecessary  
16 expenditures that arise throughout litigation by dispensing of any spurious issues prior  
17 to trial. Sidney-Vinstein v. A.H. Robins Co., 697 F.2d 880, 885 (9th Cir. 1983); Chong  
18 v. State Farm Mut. Auto. Ins. Co., 428 F.Supp.2d 1136, 1139 (S.D. Cal. 2006). Rule  
19 12(f) motions "are generally regarded with disfavor because of the limited importance  
20 of pleading in federal practice, and because they are often used as a delaying tactic."  
21 Neilson v. Union Bank of Cal., N.A., 290 F.Supp.2d 1101, 1152 (C.D. Cal. 2003).  
22 Thus, courts generally grant a motion to strike only where "it is clear that the matter to  
23 be stricken could have no possible bearing on the subject matter of the litigation."  
24 LeDuc v. Kentucky Cent. Life Ins. Co., 814 F.Supp. 820, 830 (N.D. Cal. 1992).

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26 **II. DISCUSSION**

27 Plaintiff's motion seeks to strike any portion of Defendant Rivas' Answer that is  
28 "deemed moot, irrelevant, or dilatory." (Doc. No. 40 at 5, 8, 9.) Upon review,

1 Magistrate Judge Adler did not find anything within Rivas' pleading that warranted the  
2 requested relief. (Doc. No. 43 at 2.)

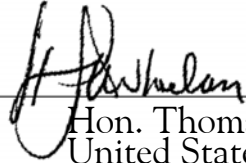
3 In his Objection, Plaintiff simply states that Magistrate Judge Adler erred in his  
4 interpretation. (Doc. No. 46 at 2.) He does not, however, explain how Magistrate Judge  
5 Adler erred, nor does he specifically identify what portions of Rivas' Answer should be  
6 stricken. The Court is unimpressed.

7 Moreover, having reviewed Rivas' Answer, the Court is unable to find any  
8 insufficiently pled defenses or any redundant, immaterial, impertinent or scandalous  
9 matter that would warrant striking the pleading. See FED. R. CIV. P. 12(f).

10 Accordingly, the Court **OVERRULES** Plaintiff's Objection, **ADOPTS** the  
11 Report in its entirety, and **DENIES** Plaintiff's motion to strike. (Doc. Nos. 43, 40.)

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13 **IT IS SO ORDERED.**

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15 DATED: July 2, 2010

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18 Hon. Thomas J. Whelan  
United States District Judge  
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